



Reply To
Attention Of

DEPARTMENT OF THE ARMY
NORFOLK DISTRICT CORPS OF ENGINEERS
FORT NORFOLK 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096

October 5, 2012

Regulatory Branch

Mr. Stephen J. Long
State Environmental Administrator
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219-2000

Dear Mr. Long:

I am writing in response to your letter dated September 25, 2012, regarding the proposed Route 460 between Petersburg and Suffolk, Virginia. My staff has met with a representative of the Virginia Department of Transportation (VDOT) and your consultants to further discuss several issues related to identifying the Least Environmentally Damaging Practicable Alternative (LEDPA) for Route 460. We appreciate the effort that VDOT has made in gathering more accurate data regarding impacts to aquatic resources so that we can better move toward a resolution of issues.

As our District Engineer noted in his letter concerning Route 460 dated August 16, 2012, information provided to us thus far has not been sufficient for us to determine that CBA2 is not a lesser damaging practicable alignment. The data we have received to date indicates that there are fewer waters of the US within the CBA2 alignment. In order for us to agree that CBA Preferred is the LEDPA, as VDOT has requested, the record must either document that CBA2 is not a practicable alignment, does not address the Purpose and Need, or is no less environmentally damaging than CBA Preferred. Please see Attachment 1, "Corps Recommendations of Factors Needed for Consideration and Identification of the LEDPA for Route 460" for further details for addressing these matters in order to identify the LEDPA.

Based on your information regarding future project management, we understand that VDOT has or will enter a bid process to select a private entity (Team) to construct the project. We further understand that this Team will be the applicant for any Corps permit and while the Team can fully participate in an assessment of avoidance and minimization, they will not be able to consider any alternatives other than CBA Preferred. Therefore, it appears that VDOT and the Corps must work together in our effort to identify the LEDPA prior to turning the project over to the Team. I understand the time constraints related to this project. The Corps is committed to continuing to work with VDOT staff to address concerns with the current alternatives analysis. Once the LEDPA alignment is agreed upon, VDOT and/or the Team will be responsible for demonstrating that impacts have been minimized within that alignment. Minimization measures must include bridging aquatic resources where practicable as well as consideration of all other measures identified in item 3 of Attachment 1.

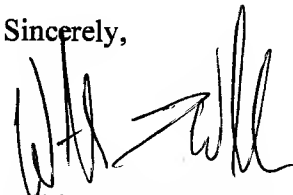
Additionally, your staff has indicated that VDOT will soon be purchasing a substantial number of wetland credits from private mitigation banks with service area including all or a portion of the impact areas for CBA Preferred. The credits were identified in response to a request for proposals issued by VDOT. While these credits may be determined to be acceptable during our evaluation of an application for this project, including a public interest review, we may also determine that they are not acceptable for compensation for the impacts of this project. Given the very substantial impacts that will result from any of the alternatives for this project, and the potential for secondary impacts associated particularly with CBA Preferred, a more comprehensive compensation plan may be required.

Finally, we are concerned at this time whether the Environmental Impact Statement (EIS) prepared by the Federal Highway Administration (FHWA) will be acceptable to meet our NEPA requirements. Typically, we prepare an Environmental Assessment when we issue an individual permit. However, recent information indicates a potentially sizable increase impacts to waters of the US over those addressed in the FHWA EIS. Also, as we work to address the LEDPA issue, there is the potential for presentation of substantive new or additional information on the alternative alignments. Therefore, a supplemental or new EIS may be required. To supplement the existing EIS, the Corps would likely have to work jointly with FHWA. Please insure that the Team you select is aware of this possibility and the time constraints associated with it.

The Corps of Engineers can issue a permit only for the LEDPA. We must conduct an alternatives analysis to identify the LEDPA. If the Team, as the applicant and is unable (based on contractual agreements with VDOT) to participate in a full alternatives analysis, then the alternatives analysis and identification of the LEDPA must occur prior to turning the project over to the Team. If you can demonstrate that CBA Preferred is the LEDPA, following the recommendations provided in this letter and attachment, then it may be permissible. I hope that our agencies can continue to work together to resolve this matter while continuing to accomplish our missions and objectives.

A copy of this letter will be provided to Ms. Irene Rico at the FHWA in Richmond. If you have any questions, please feel free to contact me by email (William.T.Walker@usace.army.mil) or by telephone at (757) 201-7657.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. T. Walker', with a stylized flourish at the end.

William T. Walker
Chief, Regulatory Branch

Enclosure

Attachment 1.
Corps Recommendations of Factors Needed
for Consideration and Identification of the LEDPA for Route 460

1. **Limited Access on CBA2:** In this evaluation, VDOT should consider what properties must be purchased in their entirety for the widening. Of the remaining properties that would require alternate access, VDOT should consider purchasing these properties as well. If purchasing properties is not a viable option, VDOT should consider constructing access roads on north and/or south of Route 460, and any other access measures of which VDOT is aware (perhaps reconfigured interchanges) as well as a combination of these measures. We believe that VDOT must fully address the capability of providing limited access on CBA2 because it will clarify all of the following factors, which will better allow us to consider further whether CBA Preferred is the LEDPA:
 - A. **Purpose and Need:** We understand that 55% of the alignment of CBA2 will be on the existing footprint with the remaining 45% in bypasses (new location). Providing a limited access facility appears to address concerns related to safety, travel time savings (speed), hurricane evacuation, and project funding through tolling. It appears that there are opportunities to provide limited access capability along the entire length of CBA2, but it will likely involve access roads in some areas as well as potential purchase of properties that would lose access. In order for the record to demonstrate that CBA2 does not address the Purpose and Need by not *sufficiently* addressing safety, travel times, hurricane evacuation and other factors, you must analyze where and how limited access could be provided on CBA2. We cannot assume that CBA2 cannot be a limited access facility unless it has been analyzed.
 - B. **Wetland impacts:** The additional data you and your consultants have collected in the recent field effort has resulted in a conclusion that CBA Preferred and CBA2 will have similar impacts to streams, so streams are no longer a factor in differentiating between CBA Preferred and CBA2 with regard to the LEDPA. However, in order for us to find that CBA Preferred is the LEDPA, VDOT must demonstrate that CBA2 does not provide a substantial reduction in wetland impacts. Without an actual analysis of the need for access roads and where they would be located, it is only speculation to discuss whether or not secondary access roads on CBA2 will result in appreciable impacts to wetlands. An analysis of providing access along CBA2 may demonstrate that total wetland impacts are similar to CBA Preferred.
 - C. **Practicability:** Analyzing the opportunity for providing limited access on CBA2 will more clearly indicate whether more than 55% of the roadway can be tolled, a consideration in evaluating practicability. VDOT's position is that with so much of the roadway on existing alignment, toll collection would affect only about half of the roadway and would also be cumbersome as vehicles move from the bypasses onto the existing corridor. If limited access is provided, it appears that the entire alignment could be tolled. However, you may be able to provide other information, related to engineering or other factors, in support of your position that only 55% of CBA2 could be tolled. Another factor related to practicability is the extent of displacements of

residences, businesses, and institutional buildings. An analysis of what would be necessary to providing a limited access facility for CBA2 may find appreciable additional displacements will result.

2. **Tolls:** VDOT has not provided sufficient information on the effect of tolls on the use of the road, which relates to benefits of the project. Tolls were not a factor in the traffic studies provided with the NEPA documents prepared by the Federal Highways Administration (FHWA). We understand your position that CBA Preferred best provides the opportunity for tolls as it will be on new location and constructed as a limited access facility. However, it is unclear whether constructing a new facility with tolls while a four-lane, un-tolled, parallel roadway remains will result in CBA Preferred providing less of the benefits to safety, travel times, etc. than projected. In other words, will most travelers choose to take the un-tolled road? We believe that a comparison of traffic benefits shown in the NEPA documents vs. current projections with tolls in place is important in considering practicability as well as addressing the purpose and need.
3. **Avoidance and minimization on CBA Preferred:** As discussed previously, CBA Preferred can only be deemed the LEDPA alignment if VDOT can clearly demonstrate that CBA2 fails to meet the Purpose and Need, is not practicable, or does not present a lesser damaging alternative. Measures which may be implemented to further reduce impacts include extensive bridging, particularly of seasonally and permanently inundated forested wetlands, shifts outside of the 500-foot-wide corridor, changes in the typical section that reduce the fill footprint (such as eliminating the median through broad wetland areas or using retaining walls rather than sloping fills), and the elimination or reconfiguration of interchanges. As you recall, the original CBA1 was modified to avoid displacements of homes in one area (resulting in CBA Preferred). This modification resulted in nine acres of wetlands also being avoided. This suggests that there are other opportunities to avoid wetland impacts through movement of the current corridor. Knowledge of the location and extent of wetlands outside the 500-foot corridor gained by your consultants during their recent field efforts would be useful in efforts to look at shifting the corridor. Please note that all of these measures should also be considered in the minimization of impacts once the LEDPA alignment has been agreed upon. Therefore, any Team chosen to advance this project must have the ability to fully consider each of these potential minimization measures.